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8 *Attorneys for Complainant*

10 **BEFORE THE**
11 **MEDICAL BOARD OF CALIFORNIA**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

13 In the Matter of the Accusation Against:

14 **ROBERT L. TURK, M.D.**
1760 Key Lane
15 El Cajon, CA 92021

16 **Physician's and Surgeon's Certificate**
17 **No. A 22577,**

18 Respondent.

Case No. 800-2014-010785

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

19 **FINDINGS OF FACT**

20 1. On or about November 22, 2017, Complainant Kimberly Kirchmeyer, in her official
21 capacity as the Executive Director of the Medical Board of California, Department of Consumer
22 Affairs, filed Accusation No. 800-2014-010785 against Robert L. Turk, M.D. (respondent) before
23 the Medical Board of California (Board).

24 2. On or about July 14, 1967, the Board issued Physician's and Surgeon's Certificate
25 No. A 22577 to respondent. The Physician's and Surgeon's Certificate expired on October 31,
26 2016, and has not been renewed. (Exhibit 1.)¹

27 ¹ The exhibits referred to herein, which are true and correct copies of the originals, are contained in the
28 separate accompanying "Default Decision Evidence Packet" and will be identified by "Exhibit" Followed by the
specific exhibit number.

1 3. On or about November 22, 2017, Jody Wright, an employee of the Board, served by
2 Certified Mail (Certified Mail No. 7012 3460 0000 2387 4292) a true and correct copy of
3 Accusation No. 800-2014-010785, Statement to Respondent, Notice of Defense, Request for
4 Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7 to respondent's
5 address of record with the Board, which was and is: 1760 Key Lane, El Cajon, CA 92021. A true
6 and correct copy of Accusation No. 800-2014-010785, the related documents, and the Declaration
7 of Service dated November 22, 2017, are attached hereto as Exhibit 2, and are incorporated by
8 reference as if fully set forth herein.

9 4. On or about December 12, 2017, a Courtesy Notice of Default Letter was mailed by
10 First Class Mail to respondent at his address of record on file with the Board. (Exhibits 3 and 4.)

11 5. Service of the Accusation was effective as a matter of law under the provisions of
12 Government Code section 11505, subdivision (c).

13 6. Business and Professions Code section 118 states, in pertinent part:

14 "...

15 “(b) The suspension, expiration, or forfeiture by operation of law of a license
16 issued by a board in the department, or its suspension, forfeiture, or cancellation by
17 order of the board or by order of a court of law, or its surrender without the written
18 consent of the board, shall not, during any period in which it may be renewed,
19 restored, reissued, or reinstated, deprive the board of its authority to institute or
20 continue a disciplinary proceeding against the licensee upon any ground provided by
21 law or to enter an order suspending or revoking the license or otherwise taking
22 disciplinary action against the license on any such ground.”

23 7. Government Code section 11506 states, in pertinent part:

24 "...

25 “(c) The respondent shall be entitled to a hearing on the merits if the
26 respondent files a notice of defense, and the notice shall be deemed a specific denial
27 of all parts of the accusation not expressly admitted. Failure to file a notice of

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1 defense shall constitute a waiver of respondent's right to a hearing, but the agency in
2 its discretion may nevertheless grant a hearing."

3 8. Respondent failed to file a Notice of Defense within 15 days after service upon him
4 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
5 800-2014-010785.

6 9. California Government Code section 11520 states, in pertinent part:

7 "(a) If the respondent either fails to file a notice of defense or to appear at the
8 hearing, the agency may take action based upon the respondent's express admissions
9 or upon other evidence and affidavits may be used as evidence without any notice to
10 respondent.

11 "..."

12 10. Pursuant to its authority under Government Code section 11520, the Board finds
13 respondent is in default. The Board will take action without further hearing and, based on
14 respondent's express admissions by way of default and the evidence before it as contained in the
15 separate accompanying "Default Decision Evidence Packet," finds that the charges and
16 allegations in Accusation No. 800-2014-010785, and each of them, separately and severally, are
17 true and correct.

18 11. California Business and Professions Code section 2227 provides that a licensee who
19 is found guilty under the Medical Practice Act may have his or her license revoked, suspended for
20 a period not to exceed one year, be placed on probation and required to pay the costs of probation
21 monitoring, be publicly reprimanded, or such other action taken in relation to discipline as the
22 Medical Board deems proper.

23 12. California Business and Professions Code section 2234 states, in pertinent part:

24 "The Board shall take action against any licensee who is charged with
25 unprofessional conduct. In addition to other provisions of this article,
26 unprofessional conduct includes, but is not limited to, the following:

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28 ///

1 "...

2 "(b) Gross negligence.

3 "..."

4 13. Respondent has subjected his Physician's and Surgeon's Certificate No. A 22577 to
5 disciplinary action by reason of the following:

6 **Gross Negligence**

7 14. Respondent has subjected his Physician's and Surgeons Certificate No. A 22577 to
8 disciplinary action under sections 2227 and 2234, as defined in section 2234, subdivision (b), of
9 the Code, in that he committed gross negligence in his care and treatment of Patient A², as more
10 particularly alleged hereinafter.

11 15. On or about August 1, 2012, Patient A sustained an injury to her right wrist. A series
12 of X-rays were taken of her wrist and submitted to respondent for interpretation.

13 16. Respondent reviewed and interpreted the X-rays and determined it was a negative
14 study.

15 17. Based upon respondent's negative X-ray report, Patient A's treating physicians
16 treated Patient A as having sustained a contusional injury.

17 18. A subsequent review of the X-rays revealed a comminuted, non-displaced fracture
18 with intra-articular extension but without volar angulation.

19 19. Respondent was grossly negligent in his care and treatment of Patient A, including,
20 but not limited to, failing to interpret, recognize and report the right distal fracture on the X-rays
21 taken of Patient A's wrist. (Exhibit 5.)

22 **DETERMINATION OF ISSUES**

23 1. Based on the foregoing findings of fact, respondent Robert L. Turk, M.D. has
24 subjected his Physician's and Surgeon's Certificate No. A 22577 to disciplinary action.

25 2. The Board has jurisdiction to adjudicate this matter by default.

26 3. Pursuant to its authority under Government Code section 11520, and based on the
27 evidence before it, and the Finding of Facts contained in paragraphs 1 through 19, above, the

28 ² For patient privacy, patient names have been withheld.

1 Board hereby finds that the charges and allegations contained in Accusation No. 800-2014-
2 010785, and each of them, separately and severally, are true and correct.

3 4. Pursuant to its authority under Government Code section 11520, and by reason of the
4 Findings of Fact contained in paragraphs 1 through 19, above, and Determination of Issues 1, 2,
5 and 3, above, the Board hereby finds that respondent Robert L. Turk, M.D., has subjected his
6 Physician's and Surgeon's Certificate No. A 22577 to disciplinary action under California
7 Business and Professions Code sections 2220, 2227 and 2234, in that he has committed gross
8 negligence in violation of Business and Professions Code section 2234, subdivision (b).

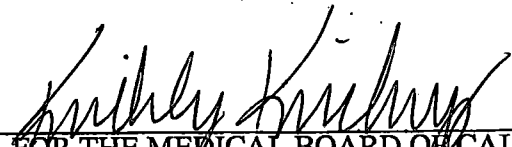
9 **ORDER**

10 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 22577,
11 heretofore issued to respondent Robert L. Turk, M.D., is revoked.

12 Pursuant to Government Code section 11520, subdivision (c), respondent may serve a
13 written motion requesting that the Decision be vacated and stating the grounds relied on within
14 seven (7) days after service of the Decision on respondent. The agency in its discretion may
15 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

16 This Decision shall become effective on February 16, 2018 at 5:00pm

17 It is so ORDERED January 17, 2018

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20 FOR THE MEDICAL BOARD OF CALIFORNIA
21 DEPARTMENT OF CONSUMER AFFAIRS

22 Kimberly Kirchmeyer
23 Executive Director
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8 *Attorneys for Complainant*

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO November 22 2017
BY: Jody Wright ANALYST

10 BEFORE THE
11 MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
12 STATE OF CALIFORNIA

13 In the Matter of the Accusation Against:

Case No. 800-2014-010785

14 ROBERT L. TURK, M.D.
1760 Key Lane
15 El Cajon, CA 92021

ACCUSATION

16 Physician's and Surgeon's Certificate
No. A 22577,

17 Respondent.

18
19
20 Complainant alleges:

21 PARTIES

22 1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official
23 capacity as the Executive Director of the Medical Board of California, Department of Consumer
24 Affairs.

25 2. On or about July 14, 1967, the Medical Board issued Physician's and Surgeon's
26 Certificate No. A 22577 to Robert L. Turk, M.D. (respondent). The Physician's and Surgeon's
27 Certificate expired on October 31, 2016, and has not been renewed.

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4. Section 2227 of the Code states:

“(1) Have his or her license revoked upon order of the board.

“(3) Be placed on probation and be required to pay the costs of probation

“(5) Have any other action taken in relation to discipline as part of an order of

probation, as the board or an administrative law judge may deem proper.

“(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical review or advisory conferences, professional competency examinations, continuing education activities, and cost reimbursement associated therewith that are agreed to with the board and successfully completed by the licensee, or other matters made confidential or privileged by existing law, is deemed public, and shall be made available to the public by the board pursuant to Section 803.1.”

///

1 5. Section 2234 of the Code, states, in pertinent part:

2 "The board shall take action against any licensee who is charged with
3 unprofessional conduct. In addition to other provisions of this article, unprofessional
4 conduct includes, but is not limited to, the following:

5 "

6 "(b) Gross negligence.

7 "..."

8 6. Section 118 of the Code states, in pertinent part:

9 "

10 (b) The suspension, expiration, or forfeiture by operation of law of a license
11 issued by a board in the department, or its suspension, forfeiture, or cancellation by
12 order of the board or by order of a court of law, or its surrender without the written
13 consent of the board, shall not, during any period in which it may be renewed,
14 restored, reissued, or reinstated, deprive the board of its authority to institute or
15 continue a disciplinary proceeding against the licensee upon any ground provided by
16 law or to enter an order suspending or revoking the license or otherwise taking
17 disciplinary action against the licensee on any such ground.

18 (c) As used in this section, 'board' includes an individual who is authorized
19 by any provision of this code to issue, suspend, or revoke a license, and 'license'
20 includes 'certificate,' 'registration,' and 'permit.'"

21 **FIRST AND ONLY CAUSE FOR DISCIPLINE**

22 **(Gross Negligence)**

23 7. Respondent has subjected his Physician's and Surgeon's Certificate No. A 22577 to
24 disciplinary action under section 2227 and 2234, as defined by section 2234, subdivision (b), of
25 the Code, in that respondent committed gross negligence in his care and treatment of patient A¹,
26 as more particularly alleged hereinafter:

27 ///

28 ¹ For patient privacy, patient names have been withheld.

1 8. On or about August 1, 2012, patient A sustained an injury to her right wrist. A series
2 of three (3) X-rays were taken of her right wrist and submitted to respondent for interpretation.

3 9. Respondent reviewed and interpreted the three (3) X-rays. Based upon his review,
4 respondent determined it was a negative study.

5 10. Based upon respondent's negative X-ray report, patient A's treating physicians
6 treated patient A as having sustained a contusional injury of the right wrist.

7 11. A subsequent review of the series of X-rays revealed a comminuted, non-displaced
8 fracture with intra-articular extension but without volar angulation.

9 12. Respondent was grossly negligent in his care and treatment of patient A, including,
10 but not limited to, the following:

11 A. Paragraphs 7 through 11, above, are hereby incorporated by reference as if fully
12 set forth herein; and

13 B. Failing to interpret and recognize the right distal radius fracture on the X-rays.

14 **PRAYER**

15 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
16 and that following the hearing, the Medical Board of California issue a decision:

17 1. Revoking or suspending Physician's and Surgeon's Certificate No. A 22577, issued
18 to respondent Robert L. Turk, M.D.;

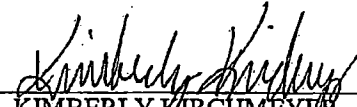
19 2. Revoking, suspending or denying approval of respondent Robert L. Turk, M.D.'s
20 authority to supervise physician assistants and advanced practice nurses;

21 3. Ordering respondent Robert L. Turk, M.D., if placed on probation, to pay the Board
22 the costs of probation monitoring; and

23 4. Taking such other and further action as deemed necessary and proper.

24 DATED:

25 November 22, 2017

26 
KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

28 SD2017802232